In the High Court of Judicature at Madras

Dated: 5.12.2006

Coram:

The Honourable Mr.Justice M.E.N.PATRUDU

Writ Petition No.18262 of 1997
and
W.P.M.P.No.28794 of 1997

M/s. Ponni Sugars (Erode) Limited,
rep. by its Vice President (Finance)
Esvin House, No.13,
Old Mahabalipuram Road,
Seevaram Village,
Perungudi, Chennai- 600 096.
(amended as per order dated 24.4.2006
made in W.P.M.P.No.21518/2004) ... Petitioner

Vs.

1. Union of India Represented by
The Secretary, Ministry of Food,
Government of India,
Krishna Bhavan, New Delhi 110 001.

2.Chief Director (Sugar),
Directorate of Sugar
Department of Sugar & Edible Oil,
Krishi Bhavan, New Delhi 110 001. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the Respondents relating to the Sugar Incentive Scheme 1993 for new sugar factories/expanded factories and quash para 11.4 of the Scheme and also the consequential communication dated 7.11.97 of the Second Respondent and direct the Respondents to fix the annual ceiling for the Petitioner at atleast 46,000 tonnes and grant incentive from the sugar year 1994-95 to 1999-2000 on par with the sugar mills situated in High Recovery Area for the purpose of the 1993 Sugar Incentive Scheme and grant such other consequential reliefs that this Hon'ble Court deems fit and proper.

For Petitioner .. Mr.A.L.Somayaji, S.C.
for M/s. Aiyar & Dolia

For Respondents .. Mr.C.Krishnan, SCGSC.

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O R D E R

1. Discrimination or discretion in any administrative action is actionable through judicial review:

2. Aggrieved by the action of Government a public body, the citizen can claim that there has been breach of justice and is entitled to approach the Law Courts for reddressal. The court of justice, entrusted with administration of Justice has authority under Law to verify whether the State's action amounts to discrimination or it falls under the discretion. Decision and Decision making power are distinct: The decision making authority may be competent, but if the decision is illegal, controversial or unconstitutional it is open for challenge. Subordinate Legislation does not part take of the immunity from Judicial Control which applies to primary Legislation. Either Legislation or decision of the Government can be attacked if there is procedural ultra vires or substantive ultra vires. If it could be shown that the decision was being used for purpose other than those intended by the primary objectives of the parent act or the original scheme, such decision even if it is within the meaning of discretion, would be declared void. So would it if the powers are unreasonable. To struck down such policy the foremost ground is it must be manifestly unjust, involve the gratuitous interference with the light of those subject to it such as could find no justification in the minds of reasonable men, disclose bad faith, or be partial and unequal in its operation as between different classes or different categories.

3. With this backdrop I shall proceed to deal with this case:

4. M/s.Ponni Sugars (Erode)Limited, represented by its Vice-President(Finance) is the petitioner herein.

5. Union of India, represented by the Secretary, Ministry of Food, Government of India, New Delhi is the first Respondent.

6. The Chief Director (Sugar), Directorate of Sugar, Department of Sugar and Edible Oil, New Delhi is the second Respondent.

7. The petitioner is a Public Limited Company engaged in manufacture of sugar. One of its factory is established at Pallipalayam, Salem District, in the State of Tamilnadu. It is located in Other Recovery Area.

8. The second Respondent is fixing annual ceiling for the petitioner and granted incentives for the sugar years on par with the sugar mills situated in High Recovery Area. Originally there was no discrimination between the mills located in High Recovery Area (HRA) and Other Recovery Area (ORA) till the new policy introduced in 1993. Through 1993 policy a restriction is imposed thereby 38,000 tonnes are fixed for the petitioner's Mill as against 46000 tonnes for HRA mills.

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9. The petitioner is challenging the same with a prayer to direct the Respondents to fix annual ceiling for the petitioner at

46,000 tonnes and to grant all incentives as is given under the previous piolicies on par with the sugar mills situated in (HRA).

10. In order to understand the controversy and decide the issue it is necessary to note some of the relevant facts.

11. Sugar is an essential commodity. In the interest of general public,there is a control of production, supply and distribution of the sugar which comes under the purview of the Essential Commodities Act 1955 (hereinafter referred to as the 'Act 10 of 1955'). Under Section 3 and 5 of the Act, the Central and State Governments are exercising various powers for regulating the production, supply and distribution of essential commodities and trade and commerce therein. Under such powers vested, the Central Government by its Order i.e. the Levy Sugar Supply (Control) Order 1979, (hereinafter referred to as 'the Order'), directed the producers of sugar to supply levy sugar which means sugar requisitioned by the Central Government. The price for such levy supply shall not be exceeding the price determined under sub Section (3-C) of Section 3 of the said Act and such price is notified annually under Sugar (Price Determination) Order.

12. Further the Central Government under the Sugar (Control) Order 1966, directed the producer of sugar to dispose of the sugar only in accordance with the directions issued by the Central Government. The Central Government while fixing the minimum price of sugarcane known as Statutory Minimum Price has to take care about the various factors like cost of producing sugarcane, return from alternate crops, general price trend of agricultural commodities, sale price of sugar and recovery of sugar from sugarcane and the Central Government has power to revise and refix the price based on the actual sale realisation of the sugar produced. The Central Government has many other controls and regulations on the packing materials to be used, weighment of each pack, marking and export of finished product. Therefore, there is right of control over the economic operations of the sugar mill by the Respondents. This is an admitted fact.

13. The State Government also advises a price for sugarcane grown in the State which is higher than the statutory minimum price fixed by the Central Government and the State Advised Price, cannot be ignored by sugar mills since, by delegation, the reservation of sugarcane growing areas to sugar mills, as also the movement of sugarcane inside and outside of the State are controlled by the State Government.

14. The other admitted facts are:- In 1974, the Government appointed a Committee known as Sampath Committee, to examine the economic viability of establishment of new sugar mills and the recommendations are given by the Committee for extension of certain incentives to new sugar mills of standard size and to expansion of old sugar units. Accordingly, various incentives are encouraged in Chapter III of the Committee's Report and three different areas are recognised and they are:

(i) Higher Recovery Area
(ii) Medium Recovery Area and
(iii) Low Recovery Area.

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Summary of the Report clarifies that the deficit in working of sugar mill established in low recovery area was very high which deficit was less in the other two areas and the Committee also evaluated the same as under:

Low Recovery Area	(-)	Rs.762 lakhs
Medium Recovery Area	(-)	Rs.749 lakhs
High Recovery Area	(-)	Rs.566 lakhs

From the above, it is clear that if the recovery is lower the deficit is higher and vice-versa it would have on the operation of the sugar mill. After receipt of the Report a circular was issued by the Directorate of Sugar and incentive scheme was introduced with specific reference to the sugar production units established in different zones. Accordingly the producing zones have been classified as low, medium and high sugar recovery areas and it is for the purpose of deciding the question of incentives to be given to projects located in those areas. The basis of classification of Zones were spelt depending on the recovery of sugar of less than 9%, between 9% and 10% and over 10%. The incentives extended to larger percentage of free sale sugar and Excise Duty concession. The State Governments all over the country were requested revision of purchase tax on sugarcane by sugar mills.

15. The most crucial thing to be noted is that the sugar mills are allowed a larger percentage of their production to be sold as free sale quota in the market with corresponding reduction in the levy obligation. Since free sugar fetches a higher price than levy sugar, the additional free sale quota constitutes incentive benefit to render new expansion projects economically viable. Accordingly, out of the production, the percentage of free sugar was fixed as follows:

Year of production	Total Free % for Recoveryd Area.			Normal Free %
Year	High	Medium	Low	
1	65	65	70	35
2	55	60	70	35
3	50	55	60	35
4	50	50	55	35
5	45	45	45	35
Total	265	275	300	175
Additional free over normal free being INCENTIVE	90%	100%	125%	..

Therefore, the incentive was available for a period of five years. It is to be noted that for a period of five years the incentive benefit for the low recovery is 125%,for medium recovery 100% and for high recovery 90%. Thus, it is clear that the lower recovery classification, higher was the incentive benefit. The incentive became inoperative as the control on the price distribution, release and movement of sugar was lifted. Partial control and dual pricing system was introduced and the incentive of 1975 was revised, known as

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1980 Scheme and under this scheme the incentive for a new sugar factory was made available for 5 years in the case of High and medium recovery areas and 8 years in the case of Low Recovery Areas by way of higher levy free sugar and the percentage of free quota was linked to the cost of plant and machinery.

16. The incentive is for expansion under 1980 scheme is as follows:

Incentive for Expansion under 1980 Scheme

Year	Total Free % for Recovery Areas			Normal Free %
	High	Medium	Low	
1	40	60	90	35
2	40	60	90	35
3	40	50	75	35
4	40	50	70	35
5	40	50	60	35
Total	200	270	385	175
Additional free over normal free being the INCENTIVE	25%	95%	210%	

It is to be noted that the incentive is higher for low recovery zones as against the high recovery zones. This scheme was further revised in 1987 and the higher free quota as incentive for new factories for a period of 10 years was provided. The incentives for new factories under 1987 schemes are as follows:

Incentives for New Factories under 1987 Scheme

Year	Total Free % for Recovery Areas			Normal Free %
	High	Medium	Low	
1	100	100	100	50
2	100	100	100	50
3	100	100	100	50
4	100	100	100	50
5	100	100	100	50
6	50	100	100	50
7	50	100	100	50
8	50	100	100	50
9	50	100	100	50
10	50	100	100	50
Total	750	900	1000	500
Additional free over normal free being the INCENTIVE	250%	400%	500%	

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Incentive for expansion under 1987 Scheme are as follows:

Intensive for Expansion under 1987 Scheme

Year	Total Free % for Recovery Areas High	Medium	Low	Normal Free %
1	70	90	100	50
2	66	90	100	50
3	66	90	100	50
4	66	90	100	50
5	66	90	100	50
Total	334	450	500	250
Additional free over normal free being the INCENTIVSE	84%	200%	250%	

17. 1987 Scheme specifies that the classification of High, Medium and Low Recovery Areas under the 1980 scheme would continue to hold good for the purpose of determining the incentive to sugar factories under the 1987 Scheme as well and the incentive over a period of five years was fixed at higher levels for Low Recovery areas as against the High Recovery Areas.

18. The Scheme again came to be revised in December 1988 and the classification according to the Recovery Area was maintained but limited to two Zones as High Recovery Area and Other Recovery Area and those areas were also defined. Accordingly, the High Recovery Area shall mean sugar producing Zones with an average recovery of 10% and above. Other Recovery Area shall mean sugar producing Zones with an average recovery below 10%. The Zones falling under these two areas are as follows:

19. High Recovery Area (HRA) - State of Punjab, part of South Gujarat, Maharastra and Karnataka. The Other Recovery Areas (ORA) are areas other than those specified above. Thus, State of Tamil Nadu comes under the Other Recovery Area.

Incentive for new factories under 1988 Scheme are as follows:

Incentive for New Factories under 1988 Scheme

Year	Total Free % for HRA	ORA	Normal Free %
1	60	90	55
2	78	92	55
3	78	92	55
4	78	92	55
5	78	92	55
6	55	93	55
7	55	93	55
Total	482	644	385
Additional free over normal free being the INCENTIVE.	97%	259%	

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Incentive for Expansion of the existing mills under 1988 Scheme are as follows:

Expansion Incentive under 1988 Scheme

Year	Total Free % for HRA	ORA	Normal Free %
1	55	60	55
2	60	80	55
3	65	80	55
4	65	80	55
5	55	80	55
Total	300	380	275
Additional free over normal free being the INCENTIVE	25%	105%	

20. From the above, it is to be noted that the incentive in the aggregate was at a higher level of 105% for Other Recovery Areas as against 25% for High Recovery Areas.

21. For the first time a ceiling on grant of incentive was fixed at 55000 tone of sugar production per sugar season and the said ceiling was uniform for sugar mills located in High Recovery Areas as well as Other Recovery Areas.

22. The said scheme was again modified in 1993 and the same classification of Recovery Areas was followed and incentives for new sugar units and expansion of existing sugar units was also provided. Here again for the purpose of reckoning the excess production, the total production to be taken as upper limit after first commencement of crushing at expanded capacity shall be the actual production of sugar restricted to an annual ceiling of 46000 tonnes in High Recovery Area; and 38000 tonnes in Other Recovery Areas. Under 1993 Scheme Additional free over normal free being the incentive is 320 for High Recovery Area and 366 for Other Recovery Area. Thus it has to be seen that in the aggregate the incentive was 366% for Other Recovery Area while it was lower percent of 320 for High Recovery Area.

All the above are admitted facts.

23. The case of petitioner is that they completed the expansion of its Erode Sugar Unit raising the capacity from 1250 TCD to 2500 TCD in November 1994. The benefits of Incentive Scheme of 1993 are available to the petitioner, and the petitioner has also opted to claim incentive benefits under 1993 Scheme. The petitioner's factory falls under Other Recovery Area, as it is in Tamilnadu.

24. The grievance of the petitioner is that instead of granting incentive to maintain equilibrium and a level-playing field with that of High Recovery Area the Government has chosen to punish the petitioner by denying to the petitioner the sugar incentive to 38000 tonnes as against 46000 tonnes on par with sugar mills situated in

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High Recovery Area.

25. Thus, the petitioner is seeking a direction to fix the annual ceiling for the petitioner at at least 46000 tonnes and grant incentive from the sugar year 1994-95 to 19990-2000 on par with the sugar mills situated in High Recovery Area for the purpose of the 1993 Sugar Incentive Scheme.

COUNTER:

26. The counter affidavit of the Respondents highlights the following:- In order to mitigate hardship caused to the sugar industry in the establishment of new sugar industry and for effecting substantial expansions in the existing sugar factories, caused by a steep rise in the cost of plant and machinery needed for such sugar projects, the Government sanctioned a scheme in November 1975 to provide incentives to the New sugar factories and expansion projects. It is stated that various modified and revised schemes were introduced in different spells of time. All the admitted facts stated in the order are confirmed. In para 5 of the counter, it is specifically stated that the ceiling of grant of incentive scheme was fixed at 55,000 metric tonnes sugar production per sugar season. This ceiling was uniform for all the High Recovery Area as well as Other Recovery Areas. Thus the case of the petitioner is admitted on this aspect also. But the contention of the Respondents is that in the case of incentive for new factories, the percentage of free sale entitlement is different for High Recovery Areas and Other Recovery Areas though the duration is the same but at the same time the free sale entitlement of sugar in respect of expansion projects under the same incentive scheme, the percentage of free sale entitlement is different for High Recovery Areas and Other Recovery Areas though the period of entitlement is same.

27. The stand taken by the Respondents on this aspect is that all those incentives have been provided based on the expert study relating to economic and technical aspects during the relevant period. It is further stated that certain changes have been introduced through sugar incentive scheme,1993, wherein the ceiling limit of annual sugar production for incentive purpose was fixed at 46000 metric tonnes and in Other Recovery Areas, it was fixed at 38000 metric tonnes per sugar season. While so in para 8 of the counter it is clearly admitted that in the earlier scheme, through the ceiling limit in respect of ne4w factories as well as expansion projects were subject to a ceiling of 55000 tonnes per sugar season and incentives in the case of high recovery areas and other recovery areas are totally different but in the 1993 scheme a still better modification on the earlier scheme was evolved fixing the ceiling limit in respect of High Recovery Areas as well as Other Recovery Areas. It is stated that in respect of Expansion projects the period of free sale entitlement is only 5 years in the case of HRA, in the case of ORA it is 6 years and the petitioner comes under the expansion project and under ORA. Thus the Respondents canvassed that the classification is not discriminatory. The production, control and sale of sugar mentioned in para 9. It is stated that in preamble of the incentive scheme 1993, it is clearly indicated that with a view to mitigating the hardship of the entrepreneurs involved in execution of high cost sugar projects as well as to enable them to

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become viable by utilizing surplus funds generated through higher free sale quota for repayment of term loans advanced by the financial institutions and the Sugar Development Fund and as such the ceiling were fixed for different areas. The ceiling worked out for different areas are as under:-

High Recovery Area (HRA)

2500 TCD x 170 (Crushing days) x 10.85% Recovery)= 46112.5 Tonnes Says 46000 Tonnes.

Other Recovery Area (ORA)

2500 TCD x 160 (Crushing days) x 9.5% Recovery)= 3800 Tonnes Says 38000 Tonnes.

28. The contention of the Respondents is that HRA is different from ORA and the tonnage of 46000 MT for HRA is based on the definition by their recovery % is more (i.e. more than 10.85% of cane crushed). ORA is 9.5% and below, this is based on 5 years average taken prior to 1993 scheme based on the actual technical report submitted by experts. HRA duration of crushing is 170 days in one sugar year whereas it is 160 days for ORA, because of low availability of sugarcane in other recovery areas. It is stated that areas of sugarcane reserved by State Cane Commissioners keeping in view the cane available vis-avis production capacity so as to enable all sugar mills in the State is to have equal benefit. It is also stated that the petitioner sugar factory is entitled to crush 2500 tonnes per day. Recovery rate per ORA is 9.5% per sugar year and the production is 38000 MT. It is calculated as 2500 TCD x 9.5% x 160 days = 38000 MT.

HRA 2500 x 10.85% x 170 days = 46,112.5MT i.e. 46,000 MT. Therefore, based on the production capacity the annual tonnage has been fixed in each case. The other forcible contention of the Respondents is in the case of ORA the incentive free sale in sugar is given for six years so that same level of repayment of loan by way of additional free sale of sugar i.e. 2.28 lakhs MT equal to 2.30 lakhs Mts. in the case of HRA. when the margin is very less. Therefore, the Respondents contended that fixing of incentive limit in respect of ORA and HRA is not unconstitutional. Thus, it is stated that there is no unjust or unconstitutional attitude by the Respondents and the writ petition is liable to be dismissed.

ARGUMENTS:-

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29. Heard the arguments of both sides.

Sri.A.L.Somiyaji, learned senior counsel appearing for the petitioner highlighted the beneficial features of various schemes introduced by the Respondents from time to time and forcibly contended that imposing the present limits through 1993 Scheme on the incentive is unconstitutional, illegal and inoperative. The other noteworthy contention of Sri.A.L.Somiyaji is that the Government is accepted to extend incentive to a factory located under Other Recovery Area to maintain equilibrium and a level-playing field with that of High Recovery Area and when a factory in Other Recovery Area is able to reach the standards prescribed for the factory located in the High Recovery Area, the Government must encouraged such units rather than punishing such factories by limiting the incentive to 38000 tonnes of production as against 46000 tonnes of production.

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It is contented that the Government had been regularly prescribing incentives for over a long years and a perusal of the free sale quota entitlement under the scheme manifestly make it clear that the emphasis in zone classification is to confer a better benefit for ORA in preference to the HRA. The powerful argument of the learned senior counsel is that the basic tenet of any fiscal incentive is to support weaker units in preference to stronger units and hence this consistent classification and differentiation meets with the ends of natural justice. The learned senior counsel has stated that even after the Government imposed a maximum ceiling for incentive, the Government continued to confer a higher quantum of incentive for units in ORA as compared to HRA and for the first time under the 1993 Scheme this was given a go by and no valid reasons are assigned. The required statistics are placed before the Court.

On behalf of the Respondents it is vehemently contented that the petitioner's factory is located in Other Recovery Area. Therefore, as per the scheme the petitioner is not entitled to claim any relief. It is also contended that the duration of crushing for HRA is 170 days in one-sugar year, whereas it is 160 days for ORA and basing on the crushing days and the percentage of recovery the capacity of the tonnes are fixed. The contention of the Respondents is that the High Recovery Area is different from Other Recovery Area and the recovery % in High Recovery Area is more than Other Recovery Area i.e. of cane crushed and it is based on five years average and the petitioner's factory is entitled to crush 2500 tonnes per day and the recovery rate is 9.5% per sugar year and as the production period is only 160 days the total possible production is only 38000 Mts.

30. POINT:-

The core question for determination is:

Whether the incentive scheme of 1993 is constitutional?

Point:-

(i) Sugar is sweet but now and then it becomes sour more so to a diabetic. We do not know whether the ants and other insects are affected with any sugar disease, but the humanity is attracted, addicted and affected to sugar for more than one reason. But one should be more careful while dealing with sugar, because it is very powerful and it is playing vital role in the life of humanity and in the development of the society and the survival of the ministry:

(ii) The undisputed fact is that the Government has every power in controlling production, supply and distribution and trade of sugar which is an essential commodity. The Government regulates the item and the Government fixes the levy and also fixes its price. In one sentence the Government has ultimate authority and control over the cost of inputs on sales and price outputs of sugar units. The Government has also introduced various incentives in order to encourage the sugar factories, the existing, and the newly establishing. Different areas have been identified. The primary object in identifying the different areas is to encourage the sugarcane growers as well as the mill owners for more and more production and it is for the benefit of the farmers, the owner of the factory and the Ruler. It is to be noted that originally three areas are identified as Low Recovery Area, Medium Recovery Area and High

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Recovery Area and the deficit in working of a mill established in the Low Recovery Area was very high and its deficit was less in other two areas. Where the recovery is lower but deficit is higher and vice-versa. An expert committee's report also furnish all the details.

(iii) Thus the Government is more powerful than the sugar under the law and thereby the Government is expected to maintain equality before law and equal justice to all and there should be no discrimination. If any discrimination is noticed it should be rectified either through administrative action or by judicial review:

(iv) Now I am in the process of that review:

(v) At this stage, it is necessary to note the most important favourable factor for new sugar factories as spelt out in the expert report. It says, as the economic viability of any sugar factory depends upon the availability of sugarcane, sugar recovery, duration of crushing season etc., which vary widely from region to region in this country due to Agro climatic and other factors, it has been decided to classify the sugar producing Zones in the country into low, medium and high sugar recovery areas for the purpose of deciding the question of incentives to be given to projects located therein. With regard to sugar mills coming under the purview of incentive scheme are allowed a larger percentage of their production to be sold as free sale quota in the market with corresponding reduction in the levy obligation. This is because the free sugar fetches a higher price than levy sugar, the additional free sale quota constitutes incentive benefit to render new and expansion projects economically viable. This important factor cannot be ignored.

(vi) Originally the incentives for expansion schemes for all the three areas was maintained equally and out of the production percentage of free sugar was fixed as 35% in all the five years. Though the percentage of the sugar for total free for different recovery areas are differing. Therefore lower the recovery classification higher was the incentive benefit. It appears the same scheme was followed even under 1980 scheme and the table furnished by the petitioner discloses that the incentive is higher for Low Recovery Zones as against High Recovery Zones. Even 1987 scheme clarifies that the higher free quota as incentive is given to the new factories in the various Zones and additional free over normal free being the incentive is more for low recovery areas than high recovery areas. The same thing maintained for expanded units also. The data for the 1988 scheme for new factories as well as expanded factories disclose that the aggregate incentive for the period of eligibility was higher for Other Recovery Area as against the High Recovery Area. It should be mentioned there it was 259% for Other Recovery Area as against 97% for Higher Recovery Area as far as new factories are concerned, whereas for the expanded units it is 105% for Other Recovery Area as against 25% for High Recovery Area.

(vii) It is an admitted fact that for the first time in this scheme, viz., 1988, a ceiling of grant of incentive was fixed at 55000 tonnes of sugar production per sugar season and this ceiling was uniform for sugar mills located in both areas i.e. HRA as well as ORA. The Respondents in their counter at para 5 has clearly stated that during the 1988 scheme, the ceiling of grant of incentive was fixed at 55000 metric tonnes sugar production per sugar season. This ceiling was uniform for all sugar mills located in High Recovery Area as well as Other Recovery Areas. It is also stated in para 6 that

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all these incentives have been provided based on expert study relating to economic and technical aspects during the relevant period.

(viii) While so, 1993 scheme have been introduced wherein High Recovery Area incentive was fixed at 46000 metric tonnes and for Other Recovery Area it was fixed as 38000 metric tonnes for sugar season.

(ix) The Respondents were unable to explain for this discrimination. Though it is stated that 1993 scheme is still better modification on the earlier scheme. It was not highlighted how it is better. The only point canvassed before me is that the period of free sale entitlement is only for five years in HRA whereas it is 6 years in ORA. Therefore, there is no discrimination. I am unable to agree with the same. While the ceiling was uniform at 55000 tonnes for both HRA and ORA under the 1988 scheme and it was uniform in 1987 scheme also, why the same is not maintained in 1993 scheme is unexplained. Therefore, in the considered opinion of this Court it is unreasonable and it is discriminatory between both the areas and legal interference is necessary.

(x) In the instant case the specific contention of the petitioner is that they have completed the expansion of their Erode Sugar Unit raising the capacity from 1250 tonnes crushing per day to 2500 TCD in November 1994 and the benefits of the incentive scheme of 1993 are available to the petitioner and the petitioner has opted to claim incentive under 1993 scheme. But by discriminatory ceiling of incentive fixed between the HRA and ORA the petitioner is the sufferer. This Court finds considerable force in the argument of Sri.A.L.Somiyaji, that the Respondents should have extended the incentive to the petitioner's factory to maintain equilibrium and a level-playing field with that of High Recovery Area. It is forcibly contended that the Government had been regularly prescribing incentives for over long years in respect of sugar mills established or expanded in different locations and it is also further contended that a perusal of the schemes for free sale quota entitlement clarifies that the emphasis in Zone classification has been to confer a better benefit for ORA in preference to the HRA and even after the Government imposed a maximum ceiling for incentive, the Government continued to confer a higher quantum of incentive for units in ORA as compared to HRA. But only under the 1993 Scheme, this has been given go by. The argument of the learned senior counsel is based on the figures shown in the following table:

Incentive Scheme of (year)	Maximum free sale entitlement (normal free + incentive free) during the incentive period.		
NEW UNITS	HIGH	LOW	
1987 (1250TCD)	137500	275000	(low)
		220000	(medium)
1988 (2500TCD)	270600	354200	
1993 (2500TCD)	423200	367080	

Expansion Units:

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1987 (1250TCD)	91850	137500	(low)
		123750	(medium)
1988 (2500TCD)	167750	209000	
1993 (2500TCD)	257600	228000	

and while highlighting on the same Sri.A.L.Somiyaji contended that the capital cost of expansion of the unit are the same whether it is situated in HRA or ORA and the conversion cost is also almost the same in both the areas, while the cost of sugarcane alone varies with sugar recovery from sugarcane, but all other costs remain constant.

(xi) In this circumstance the lower ceiling fixed for units newly established in ORA or expanding production in ORA is patently discriminatory. On a careful analysis of the same and on verification of the various facts and figures this Court is in total agreement with the contention of the learned senior counsel Sri.A.L.Somiyaji, appearing for the petitioner. The learned counsel for the Respondents could not explain to the petitioners contentions that are taken into consideration in fixing different ceilings between these two areas.

(xii) The counter is silent that on what factors the State has departed from the earlier schemes and why the lower eligibility ceiling is fixed in 1993. It is not explained. This Court is unable to understand the policy of the State that when sugar mills located in High Recovery Areas are encouraged to augment production of 46000 tonnes in a year, why the units located in Other Recovery Area shall be imposed restriction to augment production only up to 38000 tonnes. The argument that the sugar mills in ORA will face hardship to reach the same level of sugar production as they to procure and crush the higher volume of cane with attendant conversion costs is very reasonable argument and undoubtedly it is contrary to the noble objectives of the Government in introducing the incentive scheme. Therefore, this Court is of the firm opinion that the incentive schemes introduced in 1993 is hostile to the mills operating in Other Recovery Area and there is total discrimination between the mills operating in both the areas and such discrimination is nothing but violation under Article 14 of the Constitution of India which has guaranteed equal rights. For the opinion of this Court the Respondents cannot restrict the incentive to a ceiling of 38000 tonnes in ORA when it has fixed 46000 tonnes for HRA and accordingly I hold that this restriction is unconstitutional, illegal and it has defeated the very object behind the incentive scheme and it is nothing but frustrating the units located in ORA.

(xiii) Accordingly, the restriction contained in sugar incentive scheme 1993 in para No.11.4 limiting the incentives to 38000 tonnes of annual production in ORA is quashed and the Respondents areas directed to fix the annual ceiling of 46000 tonnes also in ORA on par with HRA.

(xiv) This direction is given keeping the public interest in to consideration and the Government is vested with a power to protect the public interest but not to encourage the discriminatory attitude. Whenever there is discrimination between the various projects and when there is no nexus between both and when the object is not achieved and when the new policy is against acting at disadvantage to one party the Court has every power to issue writs to maintain equality before law. Article 14 prohibits discriminatory action of

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the State but it does not prohibit reasonable classification: If the decision is left to the discretion of Government and the statue do not make any classification of persons or things for the purpose of applying its provisions the Court will have to examine and ascertain whether there is any principle or policy for the guidance in the matter and after such scrutiny the Court can struck down either the statue or policy or the decision of the State if it does not lay down any principle or policy and it is nothing but exercising the arbitrary power to the Government so as to enable it to discriminate between person or things similarly situated.

(xv) Applying the above well established principle, this Court has every reason to strike down 1993 policy as well as the executive action taken under such policy. At this stage it is necessary to further highlight the guiding spirit of Article 14 of the Constitution. It is an aspect of Rule of Law. The doctrine of equality before law is necessary correlating of Rule of Law. It forbids class Legislation and it does not forbid reasonable classification for the purpose of Legislation: To pass the test of permissible classification two conditions must be fulfilled:

(1) that the classification must be founded on an intelligible differentiation which distinguishes person or things that are grouped together from others left out of the group;

(2) that classification must have a rational relation to the object sought to be achieved by the statue/policy in question:

Absence of arbitrary power is the first essential of the Rule of Law. Equality before law and Equal Justice is the mandate of the Constitutional Scheme and under all circumstances, and even by self scarifies, this must be protected by every citizen in general and by the three major organs of the State, the Legislature, the executive, the Judiciary. Failure to distinguish between enequals and subjecting them to carry more burden will vitiate the equality clause. Further more benefiting the big units is nothing but discriminatory and is illegal and unconstitutional.

(xvi) The admitted facts are that the petitioner is making repeated representations to the officials of the State but on some reason or other the representations of the petitioner are not considered and in fact there is no response from the officials. As there is no other alternative the petitioner was forced to approach this Court.

(xvii) Sri.A.L.Somiyaji also stated that without prejudice to his contentions when the sugar mills of the petitioner is already in ORA granted by fixing sugar higher one available already in HRA and as the petitioner opted to 1993 scheme without prejudice to the rights and contentions the sugar incentive should be granted to the sugar mills HRA and ORA by fixing uniform annual ceiling production. This fact has to be accepted since the petitioner has expanded his capacity from 12500TCD to 2500 TCD, though the petitioner's factory is located in ORA if ceiling of 38000 tonnes is imposed in respect of the petitioner, it would be loss and hardship to the petitioner.

(xviii) Therefore, a direction is issued and the second respondent is directed to fix the annual ceiling for the petitioner at 46000 tonnes and grant incentive from the sugar year 1994-95.

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31. Accordingly, this writ petition is allowed. No costs. Consequently W.P.M.P.No.28794 of 1997 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

gr.

To

1. The Secretary, Ministry of Food, Government of India,
Krishna Bhavan, New Delhi 110 001.

2.Chief Director (Sugar),
Directorate of Sugar Department of Sugar &
Edible Oil,Krishi Bhavan, New Delhi 110 001.

1 cc to Mr.C. Krishnan, Sr. 60451
1 cc to M/s. Aiyar & Dolia, Sr. 60605

Writ Petition
No.18262 of 1997

MRD (CO)
kk 20/12

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